IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3032 OF 2005

Smt. Vidya Anantrao Manjramkar ... Petitioner

V/s

1. The Secretary,
   Mahamahind International Dhamadhoot
   Society,
   Takshashila Vidyalaya, Ulhasnagar-4,
   Dist. Thane and ors. ... Respondents

Mr. N.V. Bandiwadekar for the petitioner.

Mr. C.H. Pursnani for the Resp. Nos. 1 and 2.

Mr. M.H. Solkar, A.G.P. for the State.

CORAM: P.V. KAKADE, J.

DATED: 27TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. In view of the facts and circumstances, Rule. Rule made returnable forthwith.

3. The petitioner teacher filed Appeal No. 80 of 1999 before the Presiding Officer, School Tribunal, New

Bombay, against the order of termination dated 13.3.1999 under Sec. 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and the Rules thereunder, submitting that she was M.A., M.P.Ed. belonging to the Scheduled Caste and was fully qualified teacher. The respondent No.1 is a Trust and respondent No.2 is a school run by the said Trust. The petitioner was appointed on clock-hour basis w.e.f.14.6.1993. She was continued for academic year 1994-1995 as a full time teacher w.e.f. 13.6.1994 against the Scheduled Tribe candidate. In this manner, she was continued in service during the academic years 1995-96, 1996-97, 1997-98 and 1998-1999. The termination order dated nil was served on her on 1.6.1999 alleging that the services of the petitioner were terminated w.e.f. 30.4.1999.

4. The appeal was prosecuted by the Tribunal after hearing both sides, where the State did not appear. The learned Presiding Officer of the School Tribunal was of the view that the appointment of the petitioner was in permanent vacancy reserved for Scheduled Tribe category candidate and, therefore, the Rule 9(9)(a) of the said Act was invoked holding that the petitioner was entitled to be reinstated and order of termination was bad in law

and, as such, the termination was set aside by the order dated 25.10.2001.

5. However, while doing so, the petitioner was denied the back wages on the ground that services of the petitioner were already terminated w.e.f. 30.4.1999 and order of termination was already executed and, therefore, the petitioner was out of service till that day and had not done any work in the school and, therefore, she was not entitled for any back wages. It was also held that since the petitioner challenged only the last notice dated 31.3.1999 and said notice is declared by the Tribunal as void ab-initio, she was entitled for reinstatement but was not entitled to back wages. Hence the petition for limited purpose against the order denying the back wages.

6. As noted earlier, there is no doubt whatsoever that the petitioner’s case squarely falls under Rule 9(9)(a) of the M.E.P.S. Act and, there is no dispute in that regard. So far as the question of back wages is concerned, the respondent No.1 has filed an affidavit stating that as usual her appointment would be subject to the approval of the Department of Education and the Department of Education has granted her approval against

the Scheduled Tribe category. However, the institute is aided by the State and appointment and termination is done at the instance of department and, therefore, it is the responsibility of payment of back wages solely of the Department of Education. In other words, the respondent management has tried to evade its responsibility of payment of back wages.

In this regard, the learned counsel for the petitioner put reliance on the ruling of the Apex Court in the case of **Union of India & anr. v/s Sri Babu Ram Lalla, reported in AIR 1988 SC 344,** wherein it is held that when the termination order is found to be null and void, the concerned would be entitled to salary as the order would be deemed to be never in existence. It is further observed that since the order of termination of service of the respondent was rightly held to be a nullity, the appellant in that case was held to be entitled to be paid salary on the footing that he had always continued in service and the void order was never in existence in the eyes of law.

7. If we apply this ratio to the present case and take into account the facts and circumstances revealed from the affidavit in reply, there is no doubt whatsoever

that the reasonings adopted by the Tribunal while denying the back wages appear to be erroneous, illegal and, therefore, have to be set aside.

8. In the result, the Rule is made absolute. The petition is allowed in terms of prayer clause (b).

It is hereby directed that it is the primary responsibility of the management to pay back wages of the petitioner and thereafter the institution, which is aided by the State, would be at liberty to get it reimbursed from the State and the State shall reimburse the said amount of back wages payable by the management to the petitioner.

With these directions, the petition stands disposed of with no order as to costs.

The management to pay the amount of back wages to the petitioner within six weeks from the date of this order.

.....